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7 **UNITED STATES DISTRICT COURT**  
8 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

9  
10 NOVA ORTHO-MED, INC., a  
11 California corporation,

12 Plaintiff,

13 vs.

14 ARYA FARINPOUR, an individual,  
15 et. al.,

16 Defendant.

17  
18 ARYA FARINPOUR, an individual,

19 Counter-claimant,

20 vs.

21 NOVA ORTHO-MED, INC., a  
22 California corporation,

23 Cross-defendant

24 ) Case No. 2:15-CV-7422 RGK  
25 ) (AFMx)

26 )  
27 ) **ANSWER OF DEFENDANT**  
28 ) **ARYA FARINPOUR AND**  
29 ) **COUNTERCLAIM FOR**  
30 ) **BREACH OF CONTRACT**

31  
32  
33  
34  
35  
36  
37  
38 Defendant Arya Farinpour answers and counterclaims as follows:

## JURISDICTION

1. Defendant lacks sufficient information to form a belief as to the truth of the allegations set forth in paragraph 1, and on that basis denies those allegations.

2. Defendant lacks sufficient information to form a belief as to the truth of the allegations set forth in paragraph 2, and on that basis denies those allegations.

3. Defendant lacks sufficient information to form a belief as to the truth of the allegations set forth in paragraph 3, and on that basis denies those allegations.

## ANSWER TO THE FIRST CLAIM FOR RELIEF

4. Defendant lacks sufficient information to form a belief as to the truth of the allegations set forth in paragraph 4, and on that basis denies those allegations.

5. Defendant denies all allegations other than the address of its residence.

6. Defendant admits venue is proper.

7. Defendant denies such allegations.

8. Defendant denies such allegations.

1           9. Defendant lacks sufficient information to form a belief as to the  
2           truth of the allegations set forth in paragraph 9, and on that basis denies  
3           those allegations.  
4

5           10. Defendant lacks sufficient information to form a belief as to the  
6           truth of the allegations set forth in this paragraph, and on that basis denies  
7           those allegations.  
8

9           11. Defendant lacks sufficient information to form a belief as to the  
10           truth of the allegations set forth in this paragraph, and on that basis denies  
11           those allegations.  
12

13           12. Defendant lacks sufficient information to form a belief as to the  
14           truth of the allegations set forth in this paragraph, and on that basis denies  
15           those allegations.  
16

17           13. Defendant lacks sufficient information to form a belief as to the  
18           truth of the allegations set forth in this paragraph, and on that basis denies  
19           those allegations.  
20

21           14. Defendant admits such allegations.  
22

23           15. Defendant denies such allegations.  
24

25           16. Defendant denies such allegations.  
26

27           17. Defendant denies such allegations.  
28

18. Defendant denies such allegations.  
2

1 19. Defendant denies such allegations.

2 20. Defendant denies such allegations.

3 21. Defendant denies such allegations.

4 22. Defendant denies such allegations.

5 23. Defendant denies such allegations.

6 24. Defendant denies such allegations.

7 25. Defendant denies such allegations.

8 26. Defendant denies such allegations.

9 27. Defendant denies such allegations.

10 28. Defendant denies such allegations.

11 29. Defendant denies such allegations.

12 30. Defendant lacks sufficient information to form a belief as to the  
13 truth of the allegations set forth in this paragraph, and on that basis denies  
14 those allegations.

15 31. Defendant denies such allegations.

16 32. Defendant denies such allegations.

17 33. Defendant denies such allegations.

18 34. Defendant denies such allegations.

1           35. Defendant lacks sufficient information to form a belief as to the  
2           truth of the allegations set forth in this paragraph, and on that basis denies  
3           those allegations.  
4

5           36. Defendant denies such allegations.  
6

7           37. Defendant denies such allegations.  
8

9           38. Defendant denies such allegations.  
10

11           39. Defendant denies such allegations.  
12

13           40. Defendant denies such allegations.  
14

15           41. Defendant denies such allegations.  
16

17           42. Defendant denies such allegations.  
18

19           43. Defendant denies such allegations.  
20

21           44. Defendant denies such allegations.  
22

23           45. Defendant denies such allegations.  
24

25           46. Defendant denies such allegations.  
26

27           47. Defendant denies such allegations.  
28

29           48. Defendant denies such allegations.  
30

31           49. Defendant denies such allegations.  
32

33           50. Defendant denies such allegations.  
34

35           51. Defendant denies such allegations.  
36

37           52. Defendant denies such allegations.  
38

- 1 53. Defendant denies such allegations.
- 2 54. Defendant denies such allegations.
- 3 55. Defendant denies such allegations.
- 4 56. Defendant denies such allegations.
- 5 57. Defendant denies such allegations.
- 6 58. Defendant denies such allegations.
- 7 59. Defendant denies such allegations.
- 8 60. Defendant denies such allegations.
- 9 61. Defendant denies such allegations.
- 10 62. Defendant denies such allegations.
- 11 63. Defendant denies such allegations.
- 12 64. Defendant denies such allegations.
- 13 65. Defendant denies such allegations.
- 14 66. Defendant denies such allegations.
- 15 67. Defendant denies such allegations.

23 **FIRST AFFIRMATIVE DEFENSE**

- 24 68. Plaintiff fails to state facts sufficient to state a claim for relief.

25     ///

26     ///

## **SECOND AFFIRMATIVE DEFENSE**

### (Statutes of Limitations)

69. Plaintiff is barred from asserting some or all of the alleged claims for relief under all applicable statutes of limitations.

## THIRD AFFIRMATIVE DEFENSE

### (Laches)

70. Plaintiff is barred from asserting its alleged claims for relief based on its unreasonable delay in asserting them. Defendant relied to his detriment on Plaintiff's failure to assert its alleged rights and, then on Plaintiff's promises to negotiate settlement of the dispute, then on Plaintiff's promises to Defendant that an offer to settle was actually forthcoming; therefore, Plaintiff should be barred from raising some or all of the allegations contained in the Complaint.

## FOURTH AFFIRMATIVE DEFENSE

### (Estoppel)

71. Plaintiff is estopped by its negligence and intentional acts to assert the alleged claim for relief in the Complaint. Among other things, at all times, Defendant was acting as Plaintiff's principal in doing the acts alleged in the Complaint and Defendant's registration of the Domain was done with the knowledge, consent and explicit request of Plaintiff. After,

1 Plaintiff wrongfully breached the parties' contract, Defendant maintained  
2 the domain for Plaintiff's benefit while Plaintiff promised to present  
3 Defendant with an offer to settle Defendant's bill for his services.  
4

5 72. At all times relevant to the alleged cybersquatting, Defendant had  
6 invoices that were due, owing and unpaid. Plaintiff agreed by contract, and  
7 is so estopped, from claiming any duty was owed by Defendant at a time  
8 when Defendant's invoices were unpaid.  
9

10 11 **FIFTH AFFIRMATIVE DEFENSE**

12 (Waiver)

13 73. Plaintiff has waived, by its inaction, negligence and intentional  
14 acts, the alleged claim for relief alleged in the Complaint. Among other  
15 things, at all times, Defendant was acting as Plaintiff's principal in doing  
16 the acts alleged in the Complaint and Defendant's registration of the  
17 Domain was done with the knowledge, consent and explicit request of  
18 Plaintiff. After, Plaintiff wrongfully breached the parties' contract,  
19 Defendant maintained the domain for Plaintiff's benefit while Plaintiff  
20 promised to present Defendant with an offer to settle Defendant's bill for  
21 his services.  
22  
23

24 ////  
25

26 ////  
27

## SIXTH AFFIRMATIVE DEFENSE

### (Privilege and Justification)

74. Defendant did not register, use or traffic in the domain name with a bad faith intent to profit. In fact, the domain name has no commercial benefit to Defendant at all, and therefore it is not making or seeking to make any money. Among other things, at all times, Defendant was acting as Plaintiff's principal in doing the acts alleged in the Complaint and Defendant's registration of the Domain was done with the knowledge, consent and explicit request of Plaintiff.

## **SEVENTH AFFIRMATIVE DEFENSE**

#### (Contractual Limitation on Damages)

75. The parties agreed in a written agreement that Plaintiff's damages were limited.

## EIGHT AFFIRMATIVE DEFENSE

### (Failure to Mitigate)

76. Plaintiff has failed to mitigate its alleged damages, if any.

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11

## NINETH AFFIRMATIVE DEFENSE

(Set Off)

77. Some or all of the alleged damages suffered by Plaintiff, if such damages exist, are completely set off by the damages suffered by Defendant as alleged in Defendant's counterclaim.

## TENTH AFFIRMATIVE DEFENSE

### (Assumption of Risk)

78. Plaintiff knowingly and voluntarily assumed the risk of suffering its alleged damages. Among other things, at all times, Defendant was acting as Plaintiff's principal in doing the acts alleged in the Complaint and Defendant's registration of the Domain was done with the knowledge, consent and explicit request of Plaintiff. After, Plaintiff wrongfully breached the parties' contract, Defendant maintained the domain for Plaintiff's benefit while Plaintiff promised to present Defendant with an offer to settle Defendant's bill for his services.

## ELEVENTH AFFIRMATIVE DEFENSE

### (Unclean Hands)

79. Plaintiff are barred from recovering their alleged damages, if such damages exist, by its unclean hands. The complaint is a bad faith negotiating tactic that came at a time when Plaintiff was promising to settle

1 and pay Defendant's contract for services. These claims are an attempt to  
2 bully Defendant into settling on unfavorable terms.  
3

4 **TWELTH AFFIRMATIVE DEFENSE**

5 (Merger)

6 80. The respective rights and obligations of the parties are  
7 manifested in a written contract.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 (Master and Servant)

10 81. Defendant's acts alleged in the Complaint were done as an  
11 agent of Plaintiff in the course and scope of his agency for hire.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 (Contributory Negligence of Principal)

14 82. Plaintiff hired Defendant as its agent and directed him to do the  
15 acts alleged in the complaint.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

17 (Ratification and Affirmance)

18 83. After knowing that Defendant had registered the domains,  
19 Plaintiff ratified Defendant's acts and affirmed them as entirely proper.

20 ///

21 ///

## SEVENTEENTH AFFIRMATIVE DEFENSE

## (Rights in Intellectual Property)

84. Plaintiff assigned to Defendant by written contract in the alleged intellectual property rights.

## COUNTERCLAIM

85. The Court has jurisdiction over this Counterclaim under 28 U.S.C. §1367.

86. Venue is proper under 28 U.S.C. § 1331.

## BREACH OF CONTRACT

87. On or about July 1, 2011, Defendant Arya Farinpour (hereafter, “Farinpour”) and Plaintiff Nova-Ortho Med, Inc. (hereafter “Nova”) entered a written contract (the “Services and Materials Contract”).

88. A true and correct copy of the written agreement is attached hereto marked as Exhibit "1" and is incorporated herein as if set forth in full.

89. The Services and Materials Contract was and is supported by valuable consideration.

90. As more specifically set forth in the Services and Materials Contract, Nova hired Farinpour to provide technical support and materials at the request and under the direction of Nova.

1           91. Farinpour regularly provided his services under the Service's and  
2 Materials Contract for over three years, during which time he acted as a *de*  
3 *facto* employee of Nova.

4           92. At the request of Nova, and acting on behalf of Nova, Farinpour  
5 also entered year to year contracts with Key Information Systems for the  
6 purpose of hosting Nova's website server and firewall wherein Nova's  
7 website resided and Nova planned to have their new/future website reside.

8           93. With the knowledge and consent of Nova, Farinpour entered the  
9 Key Information Systems contracts in his own name but for the sole benefit  
10 of Nova.

11           94. In November, 2014, Nova requested Farinpour to renew the Key  
12 Information Systems contract for another year. Farinpour did so.

13           95. As of December, 2014, Farinpour had provided approximately  
14 \$50,000 worth of services and materials.

15           96. In breach of the Services and Materials Contract, Nova has failed  
16 and refused since December 2014 to pay Farinpour.

17           97. As a result, Farinpour has been harmed in an amount exceeding  
18 \$50,000.

19           98. The Services and Materials Contract provides Farinpour with the  
20 right to recover his attorney's fees and costs.

1 WHEREFORE, Farinpour prays for judgment as follows:

2 1. That Plaintiff take nothing by reason of its Complaint and that  
3 judgment be entered in favor of Defendant;

4 2. That Defendant recover costs of suit;

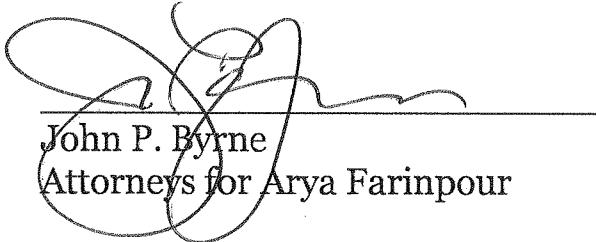
5 3. That Defendant recover attorneys' fees incurred by him in  
6 defending this action; and

7 4. That Defendant recover such further and other relief as the  
8 Court may deem just and proper.

9 5. On the Counterclaim, for a sum exceeding \$50,000, for  
10 attorneys' fees, costs of suit and for such further and other relief as the  
11 Court may deem just and proper.

12 Dated: December 7, 2015

13 JOHN P. BYRNE  
14 The ByrneLaw Office.

15   
16 John P. Byrne  
17 Attorneys for Arya Farinpour

1 PROOF OF SERVICE  
2  
3

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES  
5  
6

7 I, Sonia Gomez declare:  
8  
9

10 I am employed in Los Angeles County. My present business address is 24011  
11 Ventura Blvd., Ste. 201, Calabasas, California 91302, where this mailing occurred. I  
12 am over the age of 18 years and am not a party to this cause. I am readily familiar with  
13 the practices of collection and processing of correspondence for mailing with the United  
14 States Postal Service at this location. Such correspondence is deposited with the  
15 United States Postal Service the same day in the ordinary course of business.  
16

17 On December 7, 2015, I served the foregoing documents, bearing the title  
18 **ANSWER OF DEFENDANT ARYA FARINPOUR AND**  
19 **COUNTERCLAIM FOR BREACH OF CONTRACT** on interested parties  
20 in this action

21  by placing [ ] the original  a true copy thereof enclosed in a sealed envelope  
22 addressed as follows:

23 Brian P. Kinder, Esq.  
24 The Kindler Law Group, APC  
19200 Von Karman Avenue, Fourth Floor  
Irvine, CA 92612

25  (BY FIRST CLASS PREPAID MAIL) I placed such envelopes for collection and  
26 mailing on this date following ordinary business practices.

27  (BY ONTRAC) I placed such envelopes for collection and delivery via OnTrac (next  
28 day delivery) on this date.

29  (BY PERSONAL SERVICE) I caused the above document to be hand delivered to  
30 the offices above.

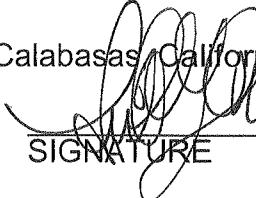
31  (BY FACSIMILE TRANSMISSION) I telecopied a true and correct copy of the  
32 document mentioned above to \_\_\_\_\_.

33  (BY ELECTRONIC MAIL) I E-mailed a true and correct copy of the document  
34 mentioned above to \_\_\_\_\_.

35  I declare under penalty of perjury, under the laws of the United States of America,  
36 that the foregoing is true and correct.

37 Executed on December 7, 2015, at Calabasas, California.

38 Sonia Gomez  
39 PRINT OR TYPE NAME

40   
41 SIGNATURE